IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.264 OF 2006

IN
SUIT NO.220 OF 2006

Hatim Rasulbhai Chitalwala & Ors. ...Plaintiffs

Versus

Saifuddin Badruddin Chitalwala & Ors. ...Defendants

Mr. Ashish Kamath, Advocate, i/b. Apex Law Partners, for Plaintiffs.

Mr. Simil Purohit, Advocate, i/b. Lokhandwala & Co., for Defendant Nos.7 to 12.

CORAM : S.J. VAZIFDAR, J.
DATED : 28TH AUGUST, 2006

P.C. :

1. The suit is filed for partition by metes and bounds in respect of the suit property which consists of land and a building thereon. The building has in it 12 flats.

2. There is no dispute regarding the title to the suit property. It was acquired by four co-owners by a Deed of Conveyance dated 3rd July, 1962. The parties to this litigation are the legal heirs of the said four co-owners.

3. There is no dispute that the property requires to be safeguarded. The only dispute is as to whether the Court Receiver is to be appointed or not. In my opinion, it is not necessary to appoint a Court Receiver.

4. There are 12 flats and 2 garages in the suit building. In respect of 6 flats, third parties are tenants. Defendant Nos.1 to 6 are in use and occupation of 2 flats and Defendant Nos.7 to 12 are in use and occupation of 4 flats. They were tenants of the erstwhile owners. There is no allegation regarding the manner in which they came into possession of the said flats.

5. The only allegation is that Flat No.4 was tenanted by one Dr. Abdul Razaak Rahimtullah and that he has surrendered the tenancy in respect of the said flat to Defendant No.10. Defendant No.10 in his affidavit-in-reply has denied that the tenancy has been surrendered. He has stated that he is in use and occupation of flat No.2 on the ground floor which was damaged considerably on 26th July, 2005 by the rains. Considering his plight, the said Dr. Rahimtullah has permitted him to occupy flat No.4 only temporarily.

In other words, the tenancy of Dr. Rahimtullah continues.

6. Considering the statements made on behalf of Defendant Nos.7 to 12 and considering the fact that there is nothing to indicate, prima facie, atleast any defalcation of funds, the following order will meet their end of justice :-

(i) Pending the hearing and final disposal of the suit, the parties will maintain status-quo in respect of the suit property.

(ii) This would include an order restraining any of the parties from accepting a surrender of the tenancies or, parting with any right, title or interest in to upon or in respect of the suit property without the permission of the Court.

(iii) It is clarified that the parties i.e. all the co-owners may jointly apply for a TDR certificate and this order will not prevent the MMRDA from granting such certificates. However, none of the co-owners will utilise or take benefit of such certificate without the

leave of the Court.

(iv) Defendant No.10 states that Dr. Rahimtullah will file an affidavit confirming the aforesaid arrangement regarding the Flat No.4 namely that he has permitted Defendant No.10 to occupy the same only temporarily. In the event of such an affidavit not being filed within four weeks from today, liberty to the Plaintiffs to apply for further ad-interim orders.

(v) The parties are also restrained from parting with possession of the premises in their occupation.

(vi) Defendant No.10 further states that so long the Flat No.4 is in his occupation, Flat No.2 will be kept vacant.

(vii) The Defendants shall furnish the Accounts and all other details in respect of the suit property upon receipt of a notice in writing specifying the information required.

(viii) The parties stated that they are desirous of and intending to go to the mediation of Mr. R.A. Dada, learned senior counsel.